

REMARKS

Claims 1, 5, 6, 7, 8, 10-11, 13 and 15-23 are pending in this application. Claims 2-4, 9, 12, and 14 have been cancelled by a previous amendment. New claims 21 - 23 are added. In the Office Action, claims 1, 5-8, 11, 13 and 15-19 are rejected over prior art. In view of amendment and remarks below, reconsideration and allowance of the claims are respectfully requested.

ALLOWABLE SUBJECT MATTER

Applicants acknowledge and thank the Examiner for indicating that claims 10 and 20 contain allowable subject matter.

CLAIM OBJECTIONS

Claims 1, 5-6, 11, 13, 15-16 and 19 are objected for containing the term "characterizing." Applicants submit that the Examiner has misunderstood the term "characterizing" vis-à-vis the claims. The term "characterizing" in the claims is not the transitional phrase used in some foreign patent practices, but rather "characterizing" is used in its plain meaning to describe the character or characteristics of "information." Withdraw of this objection is respectfully requested.

CLAIM REJECTION UNDER 35 U.S.C. §103(a)

Claims 1, 5-8, 11, 13, 15-19 are rejected under 35 U.S.C. § 103(a), as being unpatentable over Pedziwatr (U.S. 5,991,628). Applicants respectfully traverse this art ground of rejection.

The Examiner alleges that Pedziwatr teaches all the features recited in independent claims 1 and 11, except Pedziwatr fails to disclose “receiving information characterizing usage level of nodes of a second set.” The Examiner alleges that it would have been obvious to a person of ordinary skill “to cause to receive the load information of each BSC connected to a BTS and choosing the BSC with the least load level in the system taught by Pedziwatr for implementing load balancing in as part of the BTSs (see col. 5, lines 20).”

In the early days of mobile telecommunication, a base station (BS) generally consisted of a transmitter/receiver and processors/processing powers. However, the set-up cost was high and maintenance of the processors was not practical, because many of the BSs were located in remote areas. Partially in response, the transmitter/receivers and processors/processing powers were split into a base transceiver station (BTS) containing the transmitter/receivers, and a base station controller (BSC) containing the processors/processing powers. The BTSs are still located in remote areas, and the BSCs are located in readily accessible locations.

In making the obviousness rejection cited above, the Examiner is suggesting sending BSC load information to a BTS and having the BTS choose a BSC to communicate with. This would require moving the processors/processing powers back to the BTS, which is contrary to the purpose behind the BTS/BSC structure. Accordingly, such a modification would not have been obvious to one skilled in the art. This modification is certainly not suggested by Pedziwatr. And, the Examiner supplies no motivation for this modification. The Examiner has apparently fallen victim to the hindsight syndrome in making an improper *prima facie case* of obviousness. See MPEP 2145.

For at least the reasons given above, Applicants submit that independent claims 1 and 11 are patentable over Pedziwatr. In addition, dependent claims 5, 6, 7, 8, 10, 13 and 15-23 are also patentable for depending on respective allowable base claim.

CONCLUSION

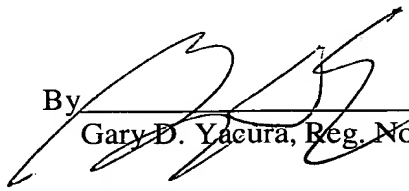
In view of the above remarks, reconsideration of the rejections and allowance of claims 1, 5, 6, 7, 8, 10-11, 13, and 15-23 are pending in this application are respectfully requested.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Gary D. Yacura at the telephone number of the undersigned below. If the Examiner believes that a personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (703) 668-8000.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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